The Indian Law Reports.

Calcutta Series.

PRIVY COUNCIL.

NAGENDRANATH DE

v.

SURESHCHANDRA DE.

P. C.*
1932

Feb. 25, 26;
April 21.

[ON APPEAL FROM THE HIGH COURT AT CALCUTTA.]

Limitation—Execution of decree—Commencement of period of limitation—"Appeal"—Indian Limitation Act (IX of 1908), Sch. I, Art. 182 (2).

By Article 182(2) of the Indian Limitation Act, 1908, Schedule I, the three years' period of limitation thereby prescribed for an application for the execution of a decree or order, "where there has been an appeal," is to run from the date of the final decree or order of the appellate court.

Held that any application by a party to an appellate court to set aside or revise a decree or order of a court subordinate thereto is an "appeal" within the meaning of the above provision, even though it is: (*a*) irregular or incompetent, or (*b*) the persons affected by the application to execute were not parties, or (*c*) it did not imperil the whole decree or order.

Christiana Sens Law v. *Benarashi Proshad Chowdhury* (1) disapproved.

Satish Chandra Chaudhuri v. *Girish Chandra Chakravarty* (2) and *Abdul Alim* v. *Abdul Hakam* (3) approved.

Decree of the High Court reversed.

Appeal (No. 84 of 1928) by defendants Nos. 11 and 12 from a decree of the High Court (February 16, 1926) reversing an order of the Subordinate Judge of Hooghly (August 4, 1924). The sole question for

* *Present*: Lord Blanesburgh, Lord Tomlin, Lord Russel of Killowen, Sir George Lowndes and Sir Dinshah Mulla.

(1) (1914) 19 C. W. N. 287. (2) (1920) I. L. R. 47 Calc. 813.
(3) (1926) I. L. R. 53 Calc. 901.

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determination was whether, as held by the High Court (Suhrawardy and Graham JJ.), an application for the execution of a decree was barred by the Indian Limitation Act, 1908, Schedule I, Article 182.

The facts and the terms of the above Article appear from the judgment of the Judicial Committee.

The appeal was argued in April, 1931, but was ordered to be reargued.

De Gruyther K. C. and *Jinnah* for the appellants.

Narasimham and *Subba Row* for respondents Nos. 1 to 4.

[Reference was made to authorities reviewed in the judgment of Graham J. in *Abdul Alim* v. *Abdul Hakam* (1), also (for the respondents) to *Kotaghiri Venkata Subbamma Rao* v. *Vellanki Venkatarama Rao* (2), and to Order XXXIV, rules 4 and 5.]

The judgment of their Lordships was delivered by

SIR DINSHAH MULLA. This appeal raises a question as to the construction of Article 182 of Schedule I of the Indian Limitation Act, 1908.

In a suit, brought many years ago, for partition of certain properties, held jointly by the parties to this appeal and their predecessors, a receiver was appointed with power to raise a loan on the security of a mortgage of the properties. The receiver borrowed Rs. 18,000 from some of the co-sharers, and, on the 10th July, 1894, he executed a mortgage of the properties in their favour. Amongst the mortgagees were Nagendranath De and Pulinbihari De, who are the appellants before this Board, and Madanmohan and his son, who are respondents Nos. 24 and 27 respectively. The position at that date was that some of the co-sharers were mortgagees and all the co-sharers were mortgagors.

In 1907, after the shares of the several co-sharers in the partition suit had been allotted to them and the

(1) (1926) I. L. R. 53 Calc. 901. (2) (1900) I. L. R. 24 Mad. 1; L.R. 27 I. A. 197.

receiver discharged, Madanmohan and his son instituted the suit, out of which the present appeal arises, in the Court of the Subordinate Judge of Hooghly to enforce the mortgage. In this suit, Madanmohan claimed that the appellants (defendants Nos. 11 and 12) had assigned their interest in the mortgage to him. The Subordinate Judge upheld his claim, and, after taking accounts between the parties, passed a preliminary mortgage decree, declaring *inter alia* the liability of the appellants to pay a sum of Rs. 4,467, which they accordingly brought into court.

On appeal to the High Court at Calcutta, a compromise was effected between the parties, and, on the 10th June, 1913, a preliminary decree in supersession of the decree of the Subordinate Judge was passed by the High Court in terms of the compromise.

Under this decree, Madanmohan's claim against the appellants was disregarded, and the appellants were shown as mortgage-creditors for Rs. 14,615-15-3. The appellants, thereupon, applied to the Subordinate Judge for the withdrawal of the Rs. 4,467. Madanmohan opposed their application, reasserting his former claim, but his contention was overruled, and the appellants were allowed to withdraw their deposit. Madanmohan appealed to the High Court, but his appeal was dismissed.

In the preliminary decree, as passed by the High Court, the co-sharers were ranged into two groups, one of decree-holders consisting of six sets of co-sharers, and the other of judgment-debtors consisting of eight sets of co-sharers. After the date of the decree, two out of the eight judgment-debtors paid the amount due from them under the decree. The rest did not pay, and, on the 4th June, 1916, Madanmohan applied to the Subordinate Judge for a final mortgage decree. In his application, he again claimed that the appellants had assigned their interest in the mortgage to him, and prayed that an order should be made to that effect. On the 24th

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June, 1920, the Subordinate Judge delivered his judgment, disallowing Madanmohan's claim, and a final decree was passed for the sale of the mortgaged properties that had come to the share of the remaining six judgment-debtors. The decree was drawn up on the 2nd August, 1920, but properly dated as of the 24th June. It contained a declaration, in conformity with the judgment, that the appellants were entitled to payment of the above-mentioned sum of Rs. 14,615-15-3 out of the proceeds of the sale of the properties.

On the 27th August, 1920, Madanmohan presented an application to the High Court purporting to be an appeal from the "order" of the Subordinate Judge of the 24th June, 1920, and alleging, what was clearly untrue, that no decree had been drawn up. His objection was only to the decision against him in respect of the assignment, and he joined as parties to the appeal only the other decree-holders and not the judgment-debtors.

The appeal, though irregular in form as not being an appeal against the decree of the Subordinate Judge, and being insufficiently stamped for this purpose, was admitted and heard in due course by Woodroffe and Suhrawardy JJ. Objection was taken to the form of the appeal; Madanmohan asked to amend, but this was refused. In the result, the appeal was dismissed, both on the ground of irregularity and upon the merits, and the dismissal was embodied in a decree of the High Court dated the 24th August, 1922.

It is upon the effect of this appeal that the decision of the question under Article 182 of the Limitation Act now before the Board depends.

On the 3rd October, 1923, the appellants presented an application to the Subordinate Judge for execution by sale of the mortgaged properties. It was opposed by some of the judgment-debtors, the present respondents Nos. 1 to 4, on the ground that it was

barred by Article 182. The material portion of that Article is in these terms :—

Description of application.	Period of limitation.	Time from which period begins to run.
For the execution of a decree or order of any civil court not provided for by article 183 or by section 48 of the Code of Civil Procedure, 1908.	Three years ..	1. The date of the decree or order ; or 2. (where there has been an appeal) the date of the final decree or order of the appellate court.

If the three years are to be calculated, as the respondents contend, from the date of the decree of the Subordinate Judge, *viz.*, the 24th June, 1920, the application was manifestly out of time; it was within time if the critical date is that of the decree of the High Court of the 24th August, 1922, and the decision of this question depends on whether Madanmohan's appeal, which was dismissed on the latter date, was an appeal within the meaning of the second clause in the third column of the Article cited above. The Subordinate Judge held that it was, and that the application was in time; the judgment-debtor-respondents appealed, and the High Court took the opposite view, and dismissed the application of the appellants.

The dismissal is supported upon three grounds, namely, (*i*) that Madanmohan's application of the 27th August, 1920 (hereinafter for convenience referred to as the 1920 appeal) was by reason of its irregularity not an appeal at all, but merely an abortive attempt to appeal; (*ii*) that an appeal, in order to save limitation under clause (*2*) of the Article, must be one to which the persons affected, *i.e.*, in the present case, the judgment-debtors, were parties; and (*iii*) that it must also be one in which the whole decree was imperilled.

In their Lordships' opinion, there is no force in the first of these contentions. There is no definition of appeal in the Code of Civil Procedure, but their Lordships have no doubt that any application by a

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party to an appellate court, asking it to set aside or revise a decision of a subordinate court, is an appeal within the ordinary acceptation of the term, and that it is no less an appeal because it is irregular or incompetent. The 1920 appeal was admitted and was heard in due course, and a decree was made upon it.

The second and third contentions have been the subject of much difference of opinion in India. In *Mashiat-un-nissa* v. *Rani* (1), three of the Judges in the Full Court took one view, and two the other. In *Gopal Chunder Manna* v. *Gosain Das Kalay* (2), a Calcutta Full Bench followed the Allahabad minority, though drawing a distinction between cases of joint and of several decrees. Subsequently further differences of opinion manifested themselves even in the Calcutta Court: see *Christiana Sens Law* v. *Benarashi Proshad Chowdhury* (3) (upon which the judgment of the High Court in the present case was based) and *Satish Chandra Chaudhuri* v. *Girish Chandra Chakravarty* (4) and *Abdul Alim* v. *Abdul Hakam* (5), in both which cases the opposite view seems to have prevailed. In the courts of Madras, Bombay and Patna, the view which was taken by the minority in the Allahabad case, and which favours the present appellants, has ultimately prevailed.

Their Lordships think that nothing would be gained by discussing these varying authorities in detail. They think that the question must be decided upon the plain words of the Article: "where there has "been an appeal," time is to run from the date of the decree of the appellate court. There is, in their Lordships' opinion, no warrant for reading into the words quoted any qualification either as to the character of the appeal or as to the parties to it; the words mean just what they say. The fixation of periods of limitation must always be to some extent

(1) (1889) I. L. R. 13 All. 1.
(2) (1898) I. L. R. 25 Calc. 594.
(3) (1914) 19 C. W. N. 287.
(4) (1920) I. L. R. 47 Calc. 813.
(5) (1926) I. L. R. 53 Calc. 901.

arbitrary, and may frequently result in hardship. But in construing such provisions, equitable considerations are out of place, and the strict grammatical meaning of the words is, their Lordships think, the only safe guide. It is at least an intelligible rule that, so long as there is any question *sub judice* between any of the parties, those affected shall not be compelled to pursue the so often thorny path of execution, which, if the final result is against them, may lead to no advantage. Nor, in such a case as this, is the judgment-debtor prejudiced. He may indeed obtain the boon of delay, which is so dear to debtors, and, if he is virtuously inclined, there is nothing to prevent his paying what he owes into court. But whether there be or be not a theoretical justification for the provision in question, their Lordships think that the words of the Article are plain, and that there, having been in the present case an appeal from the mortgage decree of the 24th June, 1920, time only ran against the appellants from the 24th August, 1922, the date of the appellate court's decree. They are, therefore, in agreement upon this point with the Subordinate Judge, and they think that the order passed by him on the 4th August, 1924, was right.

Their Lordships will, accordingly, humbly advise His Majesty that this appeal should be allowed, that the decree of the High Court dated the 16th February, 1926, should be set aside, and the order of the Subordinate Judge dated the 4th August, 1924, restored. The respondents Nos. 1 to 4 must pay the cost of the appellants in the High Court and before this Board.

Solicitors for appellants: *Watkins & Hunter.*

Solicitors for respondents: *Chapman-Walker & Shephard.*

A. M. T.